



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 121128658-2658-01]

RIN 0648-BC72

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Framework Adjustment 7

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes changing the butterfish mortality cap on the longfin squid fishery from a catch cap to a discard cap in Framework Adjustment 7 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan,. This action also proposes reducing the butterfish mortality cap for the 2013 fishing year by 13 percent (from 4,500 mt to 3,915 mt) to exclude butterfish landings that were previously included in the butterfish mortality cap allocation. The adjustment will maintain the intended function of the butterfish mortality cap by continuing to limit butterfish discards in the longfin squid fishery while accommodating a potential directed butterfish fishery during the 2013 fishing year.

DATES: Public comments must be received on [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management

Council, including the Framework Document, the Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) for Framework Adjustment 7, are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The Framework Document is also accessible via the Internet at <http://www.nero.noaa.gov>.

You may submit comments on this document, identified by NOAA-NMFS-2012-0239, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov)/#!docketDetail;D=NOAA-NMFS-2012-0239, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to the Northeast Regional Office, 55 Great Republic Dr, Gloucester, MA 01930. Mark the outside of the envelope “Comments on MSB Framework Adjustment 7.”
- Fax: (978) 281-9135, Attn: Aja Szumylo.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic

comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Aja Szumylo, Fishery Policy Analyst, 978-281-9195, fax 978-281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

The butterflyfish mortality cap on the longfin squid fishery was implemented on January 1, 2011, as part of Amendment 10 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP) (75 FR 11441, March 11, 2010) as a means of reducing fishing mortality to the butterflyfish stock. Butterflyfish discards in the longfin squid fishery account for the largest source of butterflyfish fishing mortality. The cap currently limits butterflyfish catch (both landings and discards) on directed longfin squid trips. The mortality cap accounts for fishery behavior in which most butterflyfish caught on a longfin squid trip is discarded and only a small amount of butterflyfish is landed, which has been the case since 2002. However, in response to new information that suggests increased butterflyfish abundance, the Council has recommended a much higher butterflyfish quota for the 2013 fishing year, and the increased quota would allow for a directed butterflyfish fishery for the first time in recent years.

The butterflyfish mortality cap is currently calculated by extrapolating observed butterflyfish catch (landings and discards) on longfin squid trips with an observer aboard over all unobserved longfin squid trips. All trips that land at least 2,501 lb (1.13 mt) of longfin squid are considered in the calculations for the butterflyfish mortality cap. With directed butterflyfish fishing, an observed trip could land a very large amount of butterflyfish and just enough longfin squid to still be classified as a butterflyfish mortality cap trip. This means that the cap estimation would include a

number of trips that are not truly targeting longfin squid. The most effective way to address this without reclassifying what constitutes a longfin squid trip (i.e., changing the 2,501-lb (1.13-mt) threshold) is to account for only discards of butterfish when determining how much butterfish on that trip should count against the mortality cap. To do this, the observed rate of butterfish catch (observed butterfish catch/kept all on observed squid trips) would be changed to the observed rate of butterfish discards (observed butterfish discards/kept all on observed trips), where “kept all” is the retained catch of all species on the trip.

Thus, Framework Adjustment 7 proposes to change the butterfish mortality cap on the longfin squid fishery from a catch cap to a discard cap. If the Council specifies a butterfish quota that does not accommodate a directed fishery in future fishing years, the butterfish mortality cap can be reverted to a catch cap as part of the specifications process.

This action would also reduce the butterfish mortality cap for the 2013 fishing year by 13 percent (from 4,500 mt to 3,915 mt) to exclude butterfish landings that were previously included in the butterfish mortality cap allocation. This reduction is based on year-end butterfish mortality cap analyses for the 2011 fishing year, in which 13 percent of butterfish catch in the cap was retained and 87 percent of butterfish catch in the cap was discarded. Although the total butterfish mortality allocation will decrease, the adjusted cap level is expected to maintain overall butterfish mortality in the longfin squid fishery.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, other provision of the Magnuson-Stevens Act, and other applicable

law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

As outlined in the preamble to this proposed rule, Framework Adjustment 7 proposes to change the butterfish mortality cap on the longfin squid fishery from a catch cap to a discard cap, and adjusts the 2013 cap allocation to account for this change. The Council conducted a comprehensive evaluation of the potential socioeconomic impacts of Framework Adjustment 7 in the Framework Document (see ADDRESSES), and determined that this rule will not have a significant economic impact on a substantial number of number entities. While Framework Adjustment 7 adjusts the butterfish mortality cap on the longfin squid fishery by changing what portion of butterfish mortality counts towards the cap, and adjusts the butterfish mortality cap level for the 2013 fishing year to account for the change in the cap accounting, the action does not establish annual catch limits for butterfish or change the annual allocation for any of the MSB species. This action simply means that the cap no longer limits butterfish landings on longfin squid trips.

Assuming that a directed butterfish fishery is allowed, that there is a market for butterfish, and that vessels targeting squid will continue to do so as they have in past years (i.e. the nature of a directed longfin squid trip does not change), Framework Adjustment 7 will have no impact on which vessels catch butterfish, or what and what the overall profit from butterfish will be for these vessels. Under the existing butterfish mortality cap (i.e. a butterfish mortality

cap that takes into account both landings and discards), a vessel targeting longfin squid that catches butterfish incidentally will land butterfish if there is some profit to be made from the butterfish landings. The same would occur under Framework Adjustment 7, where only the butterfish mortality cap only takes into account discards. If butterfish landings occur while a vessel is targeting longfin squid, the vessel will likely land that butterfish if there is some profit to be made from the butterfish landings.

The economic impacts of the total level of both butterfish landings and discards for the 2013 fishing year is unchanged by Framework Adjustment 7, and has already been analyzed in the 2013 MSB specifications. Further, the body of permit holders that has the potential to directly target butterfish is unchanged by Framework Adjustment 7 alone. Under both the status quo butterfish mortality cap and the discard only mortality cap, the total level of butterfish landings will be limited by the previously analyzed butterfish quota. The total allowed level of butterfish discards in the longfin squid fishery is capped through the butterfish mortality cap on the longfin squid fishery. Finally, the effects of a potential closure of the longfin squid fishery based on exceeding the butterfish mortality cap is analyzed in MSB Amendment 10, and the effects of the specific cap level set for 2013 is analyzed in 2013 MSB specifications. Thus, there are no economic impacts to evaluate. This action is only designed to maintain the effective control of butterfish mortality established in Amendment 10 and the annual specifications for the butterfish mortality cap.

The Council-conducted analyses identified 375 unique fishing entities with limited access butterfish/longfin squid permits, all of which were determined to be small entities. However, given the minor change implemented by the proposed measure, there are neither expected direct economic or disproportionate impacts to either small or large regulated entities, given the

aforementioned adjustment to the butterfish mortality cap on the longfin squid fishery process proposed in Framework Adjustment 7. As a result, an initial regulatory flexibility analysis is not required and none has been prepared. RFA analysis will be conducted, as appropriate, for subsequent actions that establish catch limits for butterfish.

Authority: 16 U.S.C. 1801 et seq.

Dated: December 10, 2012

---

Alan Risenhoover,  
Director, Office of Sustainable Fisheries,  
performing the functions and duties of the  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

[FR Doc. 2012-30119 Filed 12/12/2012 at 8:45 am; Publication Date: 12/13/2012]